

ENROLLED SENATE
BILL NO. 1033

By: Sparks of the Senate

and

Armes, Fields, Sherrer and
Kern of the House

An Act relating to agriculture; prohibiting wrongful injury or removal of certain cervidae; providing penalty; specifying damages; amending Section 4, Chapter 268, O.S.L. 2006, as amended by Section 1, Chapter 85, O.S.L. 2008 (21 O.S. Supp. 2008, Section 1835.2), which relates to trespass on lands primarily devoted to farming, ranching or forestry purposes; modifying penalties; adding affirmative defense; providing exception to certain defense; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-511 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. No person shall wrongfully injure any cervidae upon the premises of a farmed cervidae facility that is licensed pursuant to Section 6-504 of Title 2 of the Oklahoma Statutes or wrongfully remove any cervidae from the premises of a farmed cervidae facility that is licensed pursuant to Section 6-504 of Title 2 of the Oklahoma Statutes.

B. Any violation of the provision of subsection A of this section shall be deemed a misdemeanor and, upon conviction thereof, shall be punishable by a fine not less than Five Thousand Dollars (\$5,000.00) or by imprisonment in the county jail for a period not

exceeding one (1) year, or by both such fine and imprisonment. In addition, any person violating the provisions of subsection A of this section shall be liable for damages of not less than three times nor more than ten times such a sum as would compensate for the actual detriment.

SECTION 2. AMENDATORY Section 4, Chapter 268, O.S.L. 2006, as amended by Section 1, Chapter 85, O.S.L. 2008 (21 O.S. Supp. 2008, Section 1835.2), is amended to read as follows:

Section 1835.2 A. Notwithstanding the provisions of Section 1835 of ~~Title 21 of the Oklahoma Statutes~~ this title, the following provisions apply to private land that is primarily devoted to farming, ranching, or forestry purposes:

1. Except as provided in this section, whoever willfully enters private land of another that is primarily devoted to farming, ranching, or forestry purposes without permission by the owner or lawful occupant thereof shall be deemed guilty of trespass and, upon conviction thereof, shall be fined in any sum not ~~to exceed Two Hundred Fifty Dollars (\$250.00)~~ less than Five Hundred Dollars (\$500.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00), and in addition, the court shall order restitution for actual damages incurred. Persons convicted of a second or subsequent offense under this paragraph shall be guilty of a misdemeanor and shall be punished by a fine in any sum not less than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Five Hundred Dollars (\$1,500.00) nor more than One Thousand Dollars (\$1,000.00) Two Thousand Five Hundred Dollars (\$2,500.00), or by confinement in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment, and in addition, the court shall order restitution for actual damages incurred;

2. This provision shall not apply to peace officers as defined in Section 99 of ~~Title 21 of the Oklahoma Statutes~~ this title or any federal, state, or local government employees engaged in the performance of their duties, or to any firefighters, emergency medical personnel, or public utility employees engaged in addressing an emergency that presents an imminent danger to health, safety, or the environment in the performance of their duties, or to parties engaged in oil and gas operations, which shall include, without limitation, exploration, drilling, production and sales activities,

under authority of mineral ownership, an oil and gas lease, seismic agreement or permit, gas gathering, purchase, transportation, or treating contracts, Corporation Commission order, or other lawful authority from persons entitled to give the same. The provisions of this section shall not prohibit railroad employees and emergency equipment from entering such land to restore rail service following an accident, derailment or natural disaster; nor the entrance of utility employees or contractors while acting in the scope of their employment; nor employees or contractors of valid easement or license holders while acting in the scope of their employment;

3. The following persons may enter such land of another unless forbidden to do so, either orally or in writing, by the owner or lawful occupier thereof: registered land surveyors and registered professional engineers for the purpose of land surveying in the performance of their professional services; persons in the sole process of retrieving their domestic livestock or other animals; persons making a delivery, selling a product or service, conducting a survey or poll, working on behalf of a candidate for political office, or who otherwise have a legitimate reason for entering and who, immediately upon entering, seek to conduct ~~said~~ such business; and

4. Anyone who willfully or maliciously enters any such land of another and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in any sum not less than ~~Fifty Dollars (\$50.00)~~ Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00), or by confinement in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment, and in addition, the court shall order restitution for actual damages incurred. Persons convicted of a second or subsequent offense under this paragraph shall be guilty of a misdemeanor and shall be punished by a fine in any sum not less than Seven Hundred Dollars (\$700.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00), or by confinement in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment, and in addition, the court shall order restitution for actual damages.

B. This section shall not be construed to prohibit acts that are permitted pursuant to Section 5-202 or 6-304 of Title 29 of the Oklahoma Statutes.

C. 1. It shall be an affirmative defense to prosecution under paragraph 1 of subsection A of this section that the accused had express or implied permission or legal authority to be on the property.

2. If an accused reasonably believed he or she was upon property for which they had permission to be upon, it shall be an affirmative defense to prosecution under paragraph 1 of subsection A of this section that the accused had with him or her, on his or her person, written permission from the owner or lawful occupant to be upon such person's land while the accused was upon any adjoining property. This defense shall not be available to the accused if:

- a. the accused has previously pled guilty, nolo contendere, or has been convicted of any act of trespass or has been found civilly liable of any act of trespass, or
- b. the accused, while the accused was upon the adjoining property, does not have with him or her, on his or her person, the written permission specified in this paragraph.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 20th day of May, 2009.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of May, 2009.

Presiding Officer of the House
of Representatives